

REMARKS

All of the pending claims in this application were finally rejected in an Office Action dated March 6, 2007. In particular, claims 1-3, 6-8, 11-13, and 16-18 were rejected as obvious under 35 U.S.C. § 103(a) over Ratcliff et al ‘438 (U.S. Pat. 5,740,438) in view of Ratcliff et al. ‘540 (U.S. Pat. 6,778,540). Claims 4, 9, 14 and 19 were rejected as obvious under 35 U.S.C. § 103(a) over Ratcliff ‘438 and Ratcliff ‘540 further in view of Lioy (U.S. Pat. 6,775,553). Claims 5, 10, 15 and 20 were rejected as obvious under 35 U.S.C. § 103(a) over Ratcliff ‘438 and Ratcliff ‘540 further in view of Kanemaki (U.S. Pat. 6,081,845). Thus, the pending obviousness rejections all rely on Ratcliff ‘540 as a prior art reference.

Applicants request that the pending obviousness rejections of these claims be withdrawn because, as per 35 U.S.C. § 103(c), Ratcliff ‘540 is not a prior art reference against the pending application for obviousness purposes. Ratcliff ‘540 was issued on August 17, 2004, so it does not qualify as prior art under 35 U.S.C. § 102(a) against the present application, which was filed on December 3, 2001. Ratcliff ‘540 and the present application have both been assigned to International Business Machines Corporation. According to 35 U.S.C. § 103(c), “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” See also MPEP § 2146. Thus, Ratcliff ‘540 cannot be used as a 35 U.S.C. § 102(e), (f) or (g) reference for the purposes of rejecting claims in the present application as obvious under 35 U.S.C. § 103.

For at least the reasons that the pending rejection of each of the claims relies upon Ratcliff ‘540, Applicants submit that these rejections are improper and should be withdrawn. While Applicants do not necessarily agree with any other aspects of the rejections of these claims, Applicants submit that the pending claims are in condition for allowance as Applicants are not aware of any prior art references that teach or suggest the limitations for which the pending rejections relied upon Ratcliff ‘540.

The Examiner is invited to call the undersigned to discuss any matter associated with this application.

Respectfully submitted,

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